



# San Joaquin Valley Water Reliability Act

## Section-by-Section

### TITLE I

### CENTRAL VALLEY PROJECT IMPROVEMENT ACT REFORMS

#### *Sec. 101 – Amendment to purposes*

Amends § 3402 of the CVPIA (P.L. 102-575) by adding subsection (g) to include replacement of water dedicated to fish and wildlife purposes by the CVPIA by the year 2016 at a reasonably low cost as a purpose of the CVPIA.

#### *Sec. 102 – Amendment to definition*

Amends § 3403(a) of the CVPIA (P.L. 102-575) to target CVPIA actions on a priority basis towards native species of concern present in the Sacramento and San Joaquin Rivers as of 1992 (salmon, steelhead, and sturgeon). Removes both American shad and striped bass, both non-native species, from the definition of ‘anadromous fish’.

#### *Sec. 103 – Limitation on contracting and contract reform*

Amends § 3404 of the CVPIA (P.L. 102-575) to provide for successive 40 year renewal of existing Central Valley Project long-term water contracts. Retains existing CVPIA provision requiring that contracts shall include a provision to charge the contractor only for water actually delivered.

#### *Sec. 104 – Water transfers, improved water management, and conservation*

Affirms that the original intent of the CVPIA (P.L. 102-575) was to facilitate and expedite water transfers and directs the Secretary to take all necessary actions to implement the transfers.

Amends § 3405(a)(2) of CVPIA (P.L. 102-575) to provide for an expedited review of all water transfer applications. This section is amended by adding the contractor or the Secretary shall determine whether a transfer proposal is complete within 45 days of submission and in addition shall specify what must be added or revised in order to complete the transfer proposal. The provision further delineates that the Secretary shall not impose mitigation or other requirements on a proposed transfer but the contractor shall retain authority to approve or condition a proposed transfer as provided under state law.

Amends § 3405(a) of CVPIA (P.L. 102-575) to clarify that transfers, exchanges and banking arrangements among CVP contractors which could have been conducted under the law in effect prior to the enactment of the CVPIA may still take place and are not subject to the





CVPIA, and that CVPIA transfer authorities add to, and are not intended to impede, historical transfers, exchanges and banking arrangements.

Amends § 3405(b) of CVPIA (P.L. 102-575) to clarify the obligation to *measure* surface water deliveries. Requires contracting districts to ensure that all water delivery systems are equipped with devices or methods to measure the monthly volume of surface water delivered within its boundaries and specifies the area of surface water that must be measured.

Deletes § 3405(d) of CVPIA (P.L. 102-575) (tiered pricing) and the following sections are renumbered accordingly. Therefore the remainder subsections establish that increased revenues in excess of the cost of service for CVP water transferred from agricultural to municipal and industrial use shall be deposited in the Restoration Fund. The amendment serves to clarify that only the portion of transfer revenues which exceeds the Bureau's cost of service rate will be covered to the Restoration Fund. Additionally, because Section 3405(d) is deleted, revenues from tiered water pricing are no longer covered to the Restoration Fund.

#### *Sec. 105 – Fish, wildlife, and habitat restoration*

Amends § 3406(b)(1)(B) of CVPIA (P.L. 102-575) to provide *reasonable* flows to restore anadromous fish production in the Central Valley.

Amends § 3406(b)(2) of CVPIA (P.L. 102-575) consistent with the December 15, 1994 Bay-Delta Accord, to affirm the reservation and management of 800,000 acre-feet of CVP water for fish and wildlife purposes shall be available to meet Bay-Delta water quality standards and Federal Endangered Species Act requirements. It authorizes and directs reuse or diversion of any part of the 800,000 acre-feet to Agriculture or Municipal and Industrial purposes after it has fulfilled its fish and wildlife obligations. It further authorizes that if by March 15<sup>th</sup> of any year the water allocation for the Delta Division of the Central Valley Project is below 75% then the 800,000 acre-feet is reduced by 25%.

Adds § 3406(i) of CVPIA (P.L. 102-575) to clarify that by pursuing the specific mitigation projects, programs and activities authorized by this section, the Secretary shall be deemed to have met the mitigation, protection, restoration and enhancement purposes established by § 2 of the Central Valley Project Authorization Act of 1937.

#### *Sec. 106 – Restoration Fund*

Amends § 3407(a) of CVPIA (P.L. 102-575) by deleting the existing 67/33 percent split<sup>1</sup> and adds a requirement that not less than 50% of the amounts deposited to the Restoration Fund shall be expended in the Central Valley Project Unit or Division in which the amounts were collected. Adds § 3407(a)(2) of CVPIA (P.L. 102-575) which prohibits the Secretary from requiring "donations" to the Restoration Fund as a condition to contracting for storage or conveyance of non-CVP water pursuant to Reclamation laws (such as "Warren Act" or

<sup>1</sup> Section 3407(a) of CVPIA (P.L. 102-575): "...Not less than 67 percent of all funds made available to the Restoration Fund under this title are authorized to be appropriated to the Secretary to carry out the habitat restoration, improvement and acquisition (from willing sellers) provisions of this title. Not more than 33 percent of all funds made available to the Restoration Fund under this title are authorized to be appropriated to the Secretary to carry out the provisions of paragraphs 3406(b) (4)-(6), (10)-(18), and (20)-(22) of this title..."





"Section 215" water). It also prohibits Restoration Fund charges on any water that is delivered with the sole intent of groundwater recharge.

Adds § 3407(a)(3) of CVPIA (P.L. 102-575) to provide direction for the use of Restoration Funds collected from the Friant Division to assist in improving water quality and riparian values in the San Joaquin River or land within the Friant Division.

Adds § 3407 (a)(4) of CVPIA (P.L. 102-575) to provide for the use of Restoration Funds for the acquisition of water supplies and the construction of facilities to implement § 3408(j) of CVPIA (P.L. 102-575)<sup>2</sup>.

Amends § 3407(c)(1) of CVPIA (P.L. 102-575) to make certain technical and conforming amendments to provide for assessment and collection of Restoration Funds from CVP water and power beneficiaries in order to recover a portion or all of the costs of carrying out the elements of the provisions of this title.

Adds § 3407(g) of CVPIA (P.L. 102-575) which directs the Secretary, in consultation with the Restoration Fund Advisory Board created in § 3407(h), to submit to Congress a report outlining the proposed expenditure of the Restoration Funds deposited in the preceding year and describing why that plan provides optimum benefits.

Adds § 3407(h) of CVPIA (P.L. 102-575) which creates a Restoration Fund Advisory Board composed of 12 members selected by the Secretary. The board members will serve four year terms and will consist of four CVP agricultural users, three CVP municipal and industrial users, three CVP power contractors, and two at the discretion of the Secretary. The Secretary of the Interior and the Secretary of Commerce may also each designate a representative to act as an observer. The duties of the Advisory Board will be to make recommendations, annually, to the Secretary regarding priorities and spending levels on projects and programs carried out pursuant to CVPIA (P.L. 102-575) and to report to Congress biennially on the progress made to achieving the goals for the Restoration Fund as identified in CVPIA (P.L. 102-575). All expenses incurred by the Advisory Board will be paid by the CVPIA Restoration Fund.

#### *Sec. 107 – Additional authorities*

Amends § 3408(c) of CVPIA (P.L. 102-575) by striking “non-profit” thereby expanding the authority of the Secretary to enter into conveyance, storage and similar contracts with all private entities; directs the Secretary to use authority granted in this subsection to exchange, impound, store, carry or deliver non-project water using CVP facilities; develop rates for such activities and apply costs against current year operation and maintenance expenses.

Amends § 3408(f) of CVPIA (P.L. 102-575) by striking out “Interior and Insular Affairs and Merchant Marine and Fisheries” and inserting in lieu thereof “Natural Resources”; requires the reporting of progress on the plan required by subsection (j) (project yield increase); requires the Mid-Pacific Regional Director to certify required annual reports.

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<sup>2</sup> Section 3408(j) of CVPIA (P.L. 102-575) is project yield increase.





Amends § 3408(j) of CVPIA (P.L. 102-575) to establish a priority and two-year timetable for the Secretary to develop a plan to increase (by no later than the year 2016) the yield of the CVP to replace the "upfront" water reallocated by the CVPIA for fish and wildlife purposes; requires that the plan include recommendations on appropriate cost-sharing; requires that the delivery of the 800,000 acre-feet, as defined in § 3406(b)(2) of CVPIA (P.L. 102-575), be suspended until the plan achieves an increase in the annual delivery capability of the Central Valley Project by 800,000 acre-feet.

*Sec. 108 – Compliance with Endangered Species Act of 1973*

Declares that the Central Valley Project and the State Water Project have complied with all requirements of the Endangered Species Act with relation to listed species if the projects are operated in a manner consistent with the "Principles for Agreement on the Bay-Delta Standards Between the State of California and the Federal Government" (known as the Bay-Delta Accord). Directs the Secretary of the Interior and the Secretary of Commerce to issue biological opinions for the coordinated operations of the Central Valley Project and the State Water Project that are no more restrictive than the provisions in the Bay-Delta Accord. Preempts the State of California from restricting operation of the Central Valley Project and the State Water Project more than what is prescribed in the Bay-Delta Accord.

Prohibits the State of California from imposing restrictions on the take of any nonnative aquatic or terrestrial species that preys upon a native fish species in the Sacramento and San Joaquin Rivers and their tributaries or the Sacramento-San Joaquin Rivers Delta.

*Sec. 109 – Authorized service area*

Adds Kettleman City Community Services District as a new authorized service area of the Central Valley Project. Authorizes the Secretary to enter into a long-term contract, in accordance with Reclamation laws, for the delivery of up to 900 acre-feet of Central Valley Project water for municipal and industrial use. Allows the Secretary to reduce deliveries by 25% if restrictions are imposed on agricultural deliveries.

*Sec. 110 – Area of Origin and Prior Rights*

Preempts or otherwise modifies the application of California state water law to operations of the Central Valley Project to provide assurances that nothing in this title is intended to affect the application of California state water laws protecting any area of origin, watershed of origin or county of origin or protecting other water right holders, including pre-1914 appropriative water rights.

*Sec. 111 – Water Storage*

Authorizes the Secretary of the Interior to provide funds for the surface storage projects identified in Section 103(d)(1) of Public Law No: 108-361, the Water Supply, Reliability, and Environmental Improvement Act (Shasta, Los Vaqueros, Sites, Upper San Joaquin River) to local joint powers authorities to advance those projects.





## **TITLE II**

# **SAN JOAQUIN RIVER RESTORATION**

### *Sec. 201 – Reference*

Repeals the San Joaquin River Restoration Settlement Act (Subtitle A of Title X of Public Law 111-11).

### *Sec. 202 – Preemption of state law*

Declares that, notwithstanding § 8 of the Reclamation Act of 1902<sup>3</sup>, the title preempts and supersedes any State law, regulation, or requirement that imposes more restrictive requirements or regulations on the activities authorized under this title. It further declares that the Friant Division, Hidden Unit, and Buchanan Unit of the Central Valley Project shall comply with orders issued by the State Water Resources Control Board pursuant to the Porter-Cologne Water Quality Control Act.

### *Sec. 203 – Repeal of the San Joaquin River Settlement*

Directs the Secretary to cease implementation of the San Joaquin River Restoration Settlement Act and the underlying Stipulation of Settlement filed in federal court of the Eastern District of California.

### *Sec. 204 – Satisfaction and discharge of obligations*

Declares that implementation of Title II of this Act satisfies federal obligations under the CVPIA § 3406(c)(1) which requires the Secretary to develop a comprehensive plan to address fish, wildlife, and habitat concerns on the San Joaquin River. It further declares that implementation of Title II of this Act satisfies any obligations under § 5937 of the California Fish and Game Code which requires dam owners to "allow sufficient water to pass over, around or through the dam, to keep in good condition any fish that may be planted or exist below the dam."

### *Sec. 205 – San Joaquin River Habitat Restoration*

Defines a number of terms: "Restoration Flows" is a minimum flow of 50 cubic feet per second at Sack Dam; "Water Year" is 1 October through September 30; "Critical Water Year" is when total unimpaired runoff at Friant Dam is less than 400,000 acre feet.

Directs the Secretary, beginning in October 2012, to modify Friant Dam operations to release "Restoration Flows" in every year except a "Critical Water Year" in a manner that improves the fishery in the San Joaquin River between Friant Dam and Gravelly Ford. Authorizes the

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<sup>3</sup> Section 8 of the Reclamation Act of 1902: "That nothing in this Act shall be construed as affecting or intended to affect or to in any way interfere with the laws of any State or Territory relating to the control, appropriation, use, or distribution of water used in irrigation, or any vested right acquired thereunder, and the Secretary of the Interior, in carrying out the provisions of this Act, shall proceed in conformity with such laws, and nothing herein shall in any way affect any right of any State or of the Federal Government or of any landowner, appropriator, or user of water in, to, or from any interstate stream or the waters thereof: Provided, That the right of the use of water acquired under the provisions of this Act shall be appurtenant to the land irrigated, and beneficial use shall be the basis, the measure, and the limit of the right."





Secretary to, within one year of enactment, develop and implement a plan to fully recover and replace all “Restoration Flows”. Directs the Secretary, within one year of enactment, to develop and implement a plan to fully mitigate the impact on groundwater resources within the Friant Division, Hidden Unit, or Buchanan Unit from the Restoration Flows prescribed in this Act.

Affirms that nothing in the section shall confer upon anyone a private right of action or claim for relief to interpret or enforce the provisions of the section (except for contractors within Friant Division, Hidden Unit, or Buchanan Unit). Furthermore, it affirms that only water from Friant Dam may be used to implement this section and that no costs, or water supply reductions, shall be imposed on any Central Valley Project contractor outside the Friant Division, Hidden Unit, or Buchanan Unit.

#### *Sec. 206 – Restoration Fund*

Establishes the San Joaquin River Fishery Restoration Fund within the Treasury. The fund shall consist of all payments made pursuant to CVPIA § 3406(c)(1) (Friant Surcharge), any non-federal contribution, and any funds previously deposited in the San Joaquin River Restoration Fund (§ 10009(c)(1) of P.L. 111-11) on the day prior to enactment of this Act.

#### *Sec. 207 – Natural and artificially spawned species*

Directs the Secretary to recognize hatchery-spawned species when making any determination under the Endangered Species Act that relates to anadromous fish in the Sacramento and San Joaquin Rivers and their tributaries.





## **TITLE III**

# **ACCELERATION OF REPAYMENT OF CONSTRUCTION COSTS**

### *Sec. 301 – Repayment contracts and acceleration of repayment of construction costs*

Directs the Secretary, upon the request of the contractor, to convert all long-term Central Valley Project contracts entered into under subsection 9(e) of the Reclamation Project Act of 1939 into contracts under subsection 9(d) of the same law. It also authorizes the Secretary, upon the request of the contractor, to convert any long-term Central Valley Project contracts entered into under subsection 9(c)(2) of the Reclamation Project Act of 1939 into contracts under subsection 9(c)(1) of the same law. <sup>4</sup>

A contractor that chooses to convert shall be required to, either in lump sum or accelerated prepayment (deadlines are set in the section), pay the remaining balance of construction costs they owe the federal government from the allocated construction of the Central Valley Project. Those costs are published annually in the Central Valley Project Schedule of Irrigation Capital Allocations by Contractor and the Central Valley Project Schedule of Municipal and Industrial Water Rates. It further provides for capital costs that have been incurred after the date of conversion. In such case, any costs that are below \$5 million shall be repaid within five years of being incurred. Any costs above \$5 million shall be repaid as provided by applicable Reclamation law.

Full cost pricing<sup>5</sup> and acreage limitation<sup>6</sup> shall not apply to all lands in a district of a contractor that chooses to convert. Furthermore, the Secretary shall waive the pricing provisions of § 3405(d) of P.L. 102-575 (tiered pricing) of a contractor that chooses to convert.

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<sup>4</sup> According to Richard Wahl in “Markets for Federal Water: Subsidies, Property Rights, and the Bureau of Reclamation,” two types of contracts with water districts are allowable under the bureau's principal contracting authority, the Reclamation Project Act of 1939 (53 Stat. 1187; 43 U.S.C. 390). Under “repayment contracts,” [9(d) and 9(c)(2)] capital costs are amortized over the repayment period in annual installments. This fixed annual charge is not dependent on the exact amount of water delivered each year. Under “water service contracts,” [9(e) and 9(c)(1)] a combined capital and operation and maintenance charge is levied for each acre-foot of water delivered to the district. The 9(d) and 9(e) contracts relate to agriculture irrigation water and 9(c)(2) and 9(c)(1) contracts relates to water for municipal and industrial and power contracts.

<sup>5</sup> Reclamation Reform Act of 1982 § 202(3)(A): “The term “full cost” means an annual rate as determined by the Secretary that shall amortize the expenditures for construction properly allocable to irrigation facilities in service, including all operation and maintenance deficits funded, less payments, over such periods as may be required under Federal reclamation law or applicable contract provisions, with interest on both accruing from the date of enactment of the Act on costs outstanding at that date, or from the date incurred in the case of costs arising subsequent to the date of enactment of this Act: *Provided*, That operation, maintenance, and replacement charges required under Federal reclamation law, including this title, shall be collected in addition to the full cost charge.”

<sup>6</sup> The Reclamation Act of 1902 limited the amount of water an individual farmer could obtain from a federal water project to what was needed to irrigate 160 acres. This limitation was to insure that family farms, not speculators, received the benefits of a federal water project. The Reclamation Reform Act of 1982 increased the limitation to 960 acres.

